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U.S. Department of Homeland Security

Bureay of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: MIAMI, FLORIDA Date: APR 16 2003

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be withdrawn. The application will be considered unnecessary and all action on it will be terminated.

The applicant is a native and citizen of Colombia who filed an application for a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), due to his having been arrested for giving a false name to a peace officer. He is married to a United States citizen, has three United States citizen children, and is the beneficiary of an approved petition for alien fiance(e). The applicant seeks a waiver as provided under section 212(h) of the Act, in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to meet his burden of proof in a timely manner and denied the application accordingly. The AAO affirmed that decision on appeal.

On appeal, counsel asserted that a review of the facts in the applicant's case clearly reflects that the positive factors outweigh the negative ones and that to deny the applicant's request would deprive his family of his love and support as the spouse would be forced to raise and support the couple's children on her own. Counsel also asserted that the political and economic conditions in Colombia are dismal and that the country is plagued by violence from guerrillas, drug traffickers, paramilitary groups and other criminal elements.

The record reflects that the applicant was arrested under an alias on April 13, 1994 in San Francisco, California and charged with Conspiracy and Receiving Stolen Property Over $200.00. The case was discharged as of the date of the arrest. The record further reflects that the applicant was arrested on or about March 19, 1999 in California and charged with Falsely Representing Self to Officer, a misdemeanor. He was given five days credit time served and placed on probation for one year.

On motion, counsel asserts that inasmuch as the first case was discharged, no "conviction" exists as that term is defined by section 101(1)(48)(A) of the Act. Counsel also asserts that the applicant's second offense is a misdemeanor, is not a crime of violence, and that the applicant is therefore statutorily *prima facie* eligible for a waiver of inadmissibility under section 212(h) of the Act. Counsel further asserts that the applicant warrants a favorable exercise of discretion to grant his waiver request.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are

ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

Section 212(h) of the Act states:

The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

A review of the record reflects that the applicant's misdemeanor offense of falsely representing himself to a police officer is not a crime involving moral turpitude. Convictions for making false statements have been found not to be crimes involving moral turpitude. *See Matter of Di Filippo,* 10 I&N, Dec 76 (BIA 1962). The applicant is not, therefore, ineligible for admission into the United States under section 212(a)(2)(A)(i)(I) of the Act and does not require a waiver of that inadmissibility under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. After a careful review of the record, it is concluded that the applicant has met these burdens. Accordingly, the order dismissing the appeal will be withdrawn. The application will be deemed unnecessary and all action on it will be terminated.

ORDER: The order of the AAO dated December 21, 2001 dismissing the appeal is withdrawn. The application is deemed unnecessary and all action on it is terminated.